

***Developing, Implementing, Administering and
Evaluating Approved ADR Plans:
A Checklist for Court Staff and ADR
Committees***

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Michigan court rules and amendments adopted August 1, 2000, permit judges to order cases into some form of Alternative Dispute Resolution (ADR) if their court has adopted an ADR Plan approved by the State Court Administrative Office. Once a court decides that it would like to have an ADR Plan, what is the next step? The ADR Plan Checklist responds to this question by providing a sequence of steps local courts can follow to adopt and implement an approved ADR Plan.

The ADR Plan Checklist can also be helpful to courts and ADR Committees in administering and evaluating existing approved ADR plans. In this instance, the chronological sequence of the tasks set forth in the ADR Plan Checklist may not be important. Rather, the court and/or the ADR Committee may be interested in focusing on improvements or modifications to various aspects of the Plan addressed in the Checklist. For example, in the initial development of a plan, a particular court may have worked without an ADR Committee. In plan administration, the court may find it beneficial to use a committee in developing policies and procedures. In that case, the portion of the Checklist addressing committee development could be helpful.

The ADR Plan Checklist was developed by attorney-mediators Dale Ann Iverson and Anne Bachle Fifer based on input from ADR Clerks and court staff around the state and on their own experience in co-facilitating the work of the Kent County ADR Advisory Committee as it developed that county's ADR plan. The current experience of Michigan's courts spans a continuum from administering established plans to implementing newly-adopted plans to evaluating whether to adopt a plan at all. The ADR Plan Checklist endeavors to share lessons learned by those courts with existing ADR plans, so that all courts can learn from experience around the state. The ADR Plan Checklist also anticipates actions courts will need to take in the future, such as evaluating their ADR plan.

As courts gain more experience in implementing and administering their ADR plans, the ADR Plan Checklist can be revised and expanded. In the meantime, it is a means to assist local courts in maintaining their reputation for excellence as they add ADR processes to complement the services courts already offer.

STEP ONE. *Assemble an ADR Committee.*

Committee Participants	Purpose of Involvement
<input type="checkbox"/> Court Administrator	<input type="checkbox"/> Assist in communication between judges and committee <input type="checkbox"/> Provide needed resources <input type="checkbox"/> Build and maintain relationships fostered by the work of the committee
<input type="checkbox"/> ADR Clerk/ Administrator	<input type="checkbox"/> Supervise implementation of committee's work <input type="checkbox"/> Gain needed insight and information from "customers"
<input type="checkbox"/> FOC Administrator	<input type="checkbox"/> Ensure development of appropriate policies and procedures for domestic, as well as, general civil mediation
<input type="checkbox"/> Judges--general civil and family	<input type="checkbox"/> Encourage participation by all judges in proper implementation of the plan <input type="checkbox"/> Obtain important input as the implementation process unfolds
<input type="checkbox"/> Data specialist	<input type="checkbox"/> Obtain critical assistance in developing monitoring and evaluation processes <input type="checkbox"/> Avoid excess cost in developing incomplete data base initially
<input type="checkbox"/> Experts, e.g. domestic violence	<input type="checkbox"/> Obtain needed expertise on critical issues related to implementation, e.g. domestic violence screening <input type="checkbox"/> Begin developing sensitivity to needed areas for mediator training and developing curriculum and faculty
<input type="checkbox"/> Representative of the Bar Association	<input type="checkbox"/> Ensure full communication with plan users about their needs and court's plan <input type="checkbox"/> Develop expertise within the bar about ADR and the Plan <input type="checkbox"/> Continually improve reputation of the Plan within the legal community
<input type="checkbox"/> Attorneys	<input type="checkbox"/> All of the above

<ul style="list-style-type: none"> ❑ Mediators (domestic and general civil) ❑ CDRP director or designee 	<ul style="list-style-type: none"> ❑ Obtain important input on plan implementation ❑ Work to ensure mediator compliance with plan obligations ❑ Develop goodwill to maintain quality of list of approved mediators ❑ Assist w/ training, mediator “internship” ❑ Accept indigent cases ❑ Provide expertise in mediation and program administration
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STEP TWO. *Establish the list of approved mediators.*

Task	Timeline	Options	Considerations
<ul style="list-style-type: none"> ❑ Develop mediator application form 	Upon plan approval	<ul style="list-style-type: none"> ❑ SCAO Mediator Application forms:civil mc281a; domestic mc281b ❑ Other courts’ forms ❑ Modified case evaluation app. form 	<ul style="list-style-type: none"> ❑ Ensure that application conforms to plan ❑ Only ask for information you intend to, and can, use ❑ If drafting a form, it must conform with MCR 2.411(E)(1)(a)(i-iii)
<ul style="list-style-type: none"> ❑ Make the mediation application available 	Ongoing	<ul style="list-style-type: none"> ❑ Must be available in the office of the clerk. 2.411(E)(1) ❑ Plan may specify other locales, e.g.court web-site 	<ul style="list-style-type: none"> ❑ Be prepared to fax, mail or email applications to callers ❑ Applications should be provided to all who request ❑ Be sure to distinguish between applications for mediators and case evaluators

Task	Timeline	Options	Considerations
<ul style="list-style-type: none"> □ Take steps to ensure that the application reaches a broad pool of applicants 	Ongoing	<ul style="list-style-type: none"> □ Work with local bar associations, including affiliated bars (WLAM, Young Lawyers, etc) □ Communicate directly with attorneys, local CDRP 	<ul style="list-style-type: none"> □ Consider the Plan's goals in recruiting mediators as these will drive recruitment efforts, e.g. sufficient mediators to handle the caseload, or ensuring that plan users have a broad range of choices in mediators (non-lawyers, people of color, women, etc.) □ An ADR committee that includes representatives from a number of constituencies can be an effective recruiting tool

Task	Timeline	Options	Considerations
<ul style="list-style-type: none"> □ Review mediator applications and compile list 	<p>At least annually or as otherwise specified in the ADR Plan</p>	<ul style="list-style-type: none"> □ ADR Plan specifies who reviews □ ADR Clerk and/or ADR Committee (one or the other is required per 2.411(E)(2)) 	<ul style="list-style-type: none"> □ The reviewer(s) must follow the requirements of 2.411(F)(2)(a)-(c)general civil/ 3.216(G)(a)(c)domestic if the applicant completed training after 1/1/01 □ Or the SCAO Mediation Training Standards and Procedures, sec 5.0general civil/ sec.6.0domestic if trained before 12/31/00 □ Approval may be granted only where an application is completed and meets the requirements □ There are some similarities to case evaluator appointment process □ Even if the plan designates the ADR Clerk as reviewer, there are many reasons to involve a committee as well □ Additional qualifications cannot be imposed by the plan per 2.411(F)(5) □ Negative information about an applicant cannot be a basis for denying approval to applicant who meets criteria. □ Consider approving a mediator if they have been approved by another court (“Reciprocity”).
<ul style="list-style-type: none"> □ Develop procedure to timely inform applicants of deficiencies in their applications 			<ul style="list-style-type: none"> □ See MCR 2.411(E)(3).

Task	Timeline	Options	Considerations
<input type="checkbox"/> Determine the form the list will take to reflect domestic and general civil mediators			<input type="checkbox"/> Anticipate that there will be some desire to develop additional areas of specialty
<input type="checkbox"/> Determine what information will be distributed about the mediators		See Kent County Plan	

STEP THREE. *Develop and communicate case management strategy.*

Task	Timeline	Options	Considerations
<input type="checkbox"/> Determine at what stages in a case ADR will be offered or required	ASAP	ADR can be offered as soon as complaint is filed, or at any stage in the case thereafter, e.g., pre-trial conference, scheduling order	<input type="checkbox"/> Reasonable deadlines imposed by the court in the case can create meaningful opportunities to focus the parties on resolution <input type="checkbox"/> Allowing the parties as much flexibility as possible within that framework will probably enhance the effectiveness of the mediation
<input type="checkbox"/> Determine how parties are notified of mediation option		<input type="checkbox"/> Letter sent to all general civil filings, encouraging mediation <input type="checkbox"/> Pre-trial questionnaire includes “mediation” box <input type="checkbox"/> Scheduling order includes “mediation” box <input type="checkbox"/> All general civil cases ordered into ADR, then pre-trial conference w/ judge to select process	<input type="checkbox"/> Parties are not likely to choose mediation unless reminded by the court of its availability. <input type="checkbox"/> If few cases are going to mediation, review how parties are notified about it. <input type="checkbox"/> Consider sending out list of mediators, to promote both mediation and approved mediators
<input type="checkbox"/> Develop forms to communicate to parties and counsel about the plan and their obligations			

Task	Timeline	Options	Considerations
<ul style="list-style-type: none"> □ Ensure that mediators are selected and assigned timely and in accordance with court rule—see STEP FOUR. 		<ul style="list-style-type: none"> □ Scheduling order must specify time within which mediator is selected 	<ul style="list-style-type: none"> □ Most courts allow 14 days, but attorneys court could consult with attorneys to choose a different timeframe □ Some clerks call attorneys just before deadline to remind them to select a mediator □ Frequently granting extensions may send message that deadline is suggestive only
<ul style="list-style-type: none"> □ Develop form for reporting by mediator to the court 	By first case referral	<ul style="list-style-type: none"> □ SCAO Mediation Status Report Form mc 280 	
<ul style="list-style-type: none"> □ Develop clear instructions for mediators and court about what information can be solicited about the mediation session 			<ul style="list-style-type: none"> □ The promise of confidentiality made by the mediator to the participants must be preserved □ Judges and court staff should be aware that inquiries can create undue pressure to breach confidentiality
<ul style="list-style-type: none"> □ Offer an orientation for mediators about the Plan and procedures 		<ul style="list-style-type: none"> □ Use written materials □ Convene in-service or other meetings 	<ul style="list-style-type: none"> □ Consider developing a procedural protocol for mediators, e.g., 13th Circuit Protocol

STEP FOUR. *Develop appropriate procedures for using the list of approved mediators.*

Task	Timeline	Options	Considerations
<ul style="list-style-type: none"> □ Develop process to ensure that mediators are assigned in a rotational manner, receiving the same number of cases over a period of time. 2.411(B)(3) 	Immediately upon approval of the plan	<ul style="list-style-type: none"> □ Use the same random process as used for case evaluators, criminal or child protective cases □ Place each mediator's name in a box, draw names from the first box, and start over when all names have been pulled from box □ Computer system for random or rotational assignment □ Written list of names, to be followed in order, with mark placed by mediator's name once appointed 	<ul style="list-style-type: none"> □ Goal of the court rule is to remove discretion from judges and staff to "appoint" mediators □ Court should avoid "recommending" mediators □ Clerk MUST appoint the next mediator on the list when parties cannot agree □ Explore ramifications of "random" systems--do these offer the same advantages as "rotational"? □ Mediators are not guaranteed a number of mediations
<ul style="list-style-type: none"> □ Develop appropriate procedures for instances when mediators decline appointment 	ASAP		<ul style="list-style-type: none"> □ Consider what to do when selected mediator is from the same firm as one of the lawyers □ Must use the same "rotational" procedure to select substitute □ Procedures should permit mediators who decline due to conflict or availability to remain eligible for appointment

Task	Timeline	Options	Considerations
			<ul style="list-style-type: none"> □ Clerk must track those mediators “consistently unavailable to serve” for removal. 2.411(E)(4)

STEP FIVE. *Develop procedures to ensure the court deals fairly with people who are indigent.*

Task	Time-line	Options	Considerations
<input type="checkbox"/> Develop procedures consistent with plan for determining indigency	ASAP	<input type="checkbox"/> Most plans follow MCR 2.002	<input type="checkbox"/> Determine whether non-indigent party will be required to pay half the mediator's fee
<input type="checkbox"/> Develop sufficient pro bono mediator resources to meet the need	ASAP	<input type="checkbox"/> ADR Plan may require all approved mediators to provide pro bono mediations <input type="checkbox"/> If pro bono service is voluntary, use mediator application to solicit pro bono mediators	<input type="checkbox"/> Mandating pro bono service has prompted objection from mediators <input type="checkbox"/> Determine whether need for pro bono mediators can be met through existing resources, e.g., CDRP
<input type="checkbox"/> If pro bono service is optional, develop roster of pro bono mediators			<input type="checkbox"/> There should be a list of general civil pro bono as well as domestic pro bono mediators
<input type="checkbox"/> Develop rotational process for appointing these mediators	ASAP		<input type="checkbox"/> See STEP FOUR. <input type="checkbox"/> Determine whether assignment as pro bono mediator removes mediator from rotation on the list in fee cases
<input type="checkbox"/> Develop referral relationship with CDRP, and procedures for referral	ASAP		<input type="checkbox"/> Mediators used by the CDRP must be "approveable," CDRP must be able to demonstrate that.

STEP SIX. *Develop procedures for maintaining the list of court-approved mediators.*

Task	Timetable	Options	Considerations
<ul style="list-style-type: none"> □ Develop process for approving continuing mediator education (CME) and ensuring mediator compliance with CME requirement 	Ongoing after mediator list is established	<ul style="list-style-type: none"> □ Establish written criteria and procedure for approving CME 	<ul style="list-style-type: none"> □ Be prepared to respond to requests from training providers and mediators for advanced approval of specific training □ Consider working with trainers to develop curriculum responsive to the needs of mediators and participants in plan area (e.g., diversity issues, special needs of disabled in mediation, etc.) □ Consider what documentation will be required for proof of attendance, and communicate clearly to mediators and trainers
<ul style="list-style-type: none"> □ Develop and publicize the process for re-applying by approved mediators 	Ongoing after the list is first established		<ul style="list-style-type: none"> □ Mediators must reapply at least every 5 years, or less per the Plan □ Mediator reapplication process must be the same as that for new applicants. 2.411(E)(2)(a)
<ul style="list-style-type: none"> □ Develop process for addressing complaints about mediators 	ASAP and on-going	See, e.g., Kent County plan	<ul style="list-style-type: none"> □ Consider developing a process for submitting formal complaints about mediators, distinguished from soliciting information in mediation evaluations □ Process should include forms, notification to participants of process, time frames, acknowledgments, notice to mediators, opportunities for response, investigation procedure □ Consider providing outcomes to complaint process in addition to removal, e.g. discipline, mediation □ Case settlement rate is but one indicia of mediator's competence.

Task	Timetable	Options	Considerations
<ul style="list-style-type: none"> ❑ Develop process for mediator removal consistent with 2.411(E)(4) 		<p>See, e.g., Kent County Plan</p>	<ul style="list-style-type: none"> ❑ Grounds for removal include incompetence, bias, consistent unavailability, or other just cause. 2.411(E)(4). See also Michigan Mediator Standards of Conduct. ❑ Court rules address process for removal more specifically than other outcomes 2.411(E)(4) ❑ Consider working with committee to develop appropriate process to ensure compliance and fairness ❑ Consider goals of program in developing indicia of incompetence
<ul style="list-style-type: none"> ❑ Develop process for addressing complaints about administration of the Plan 		<p>See, e.g., Kent County plan</p>	<ul style="list-style-type: none"> ❑ This could include complaints about court staff behavior, scheduling, parking, information provided, or the process of mediation in general

STEP SEVEN. *Plan and develop a program for monitoring and evaluating the ADR Plan.*

Task	Time-table	Options	Considerations
<ul style="list-style-type: none"> ❑ Develop evaluation forms for parties, attorneys and mediators 	ASAP	Forms from other programs (CDRPs, VFM, EEOC, Other states, e.g., Virginia)	<ul style="list-style-type: none"> ❑ These evaluations are helpful in assessing by whom ADR is used, perceptions of participants, court, lawyers about ADR effectiveness, Plan operation ❑ Chief Judge must review operation of the ADR Plan at least annually 2.410(F)
<ul style="list-style-type: none"> ❑ Develop additional evaluation and monitoring strategies to better address all Plan goals. <i>See below.</i> 	On-going	See <u>Monitoring and Evaluating Court-Based Dispute Resolution Programs</u> , 1997 National Center for State Courts	<ul style="list-style-type: none"> ❑ These efforts would be directed at determining, among other things, whether ADR results in higher quality resolutions, extent to which resources are expended and/or saved by use of ADR, etc.
<ul style="list-style-type: none"> ❑ Identify evaluating and monitoring team 		<ul style="list-style-type: none"> ❑ ADR Committee ❑ Subcommittee on monitoring 	<ul style="list-style-type: none"> ❑ Revisit Step One for possible additions to subcommittee
<ul style="list-style-type: none"> ❑ Identify ADR Plan goals 			<ul style="list-style-type: none"> ❑ Goals articulated by SCAO should be included
<ul style="list-style-type: none"> ❑ OTHER STEPS: ❑ Develop monitoring and evaluation objectives 			
<ul style="list-style-type: none"> ❑ Identify performance measures ❑ Determine general sources for data ❑ Collect data ❑ Analyze and interpret data ❑ Determine conclusions and recommendations ❑ Prepare report and disseminate findings ❑ Implement recommendations, etc. 			

STEP EIGHT. *Partner with other courts to develop and/or administer all or parts of an approved ADR plan.*

Task	Timetable	Options	Considerations
<ul style="list-style-type: none"> □ In developing a plan, determine whether it makes sense to collaborate with one or more adjoining circuit courts, or other courts within the circuit. 	ASAP	Consider building on existing partnerships that exist in other aspects of court administration, e.g., case evaluation	<ul style="list-style-type: none"> □ May preserve scarce administrative resources and offer economies of scale □ Partnering may foster broader participation by constituent groups in developing the plan □ Partnering may promote uniformity within a broader geographic area, or among courts in the same circuit, resulting in greater convenience for parties and litigants □ Developing the partnership will require additional time □ Consider whether responsibilities must be evenly divided among partners □ It may make sense for partnering courts to administer some elements of the plan separately
<ul style="list-style-type: none"> □ Explore opportunities to partner in the administration of an existing approved ADR plan. 	On-going		<ul style="list-style-type: none"> □ Developing and maintaining the list of approved mediators may be one area for productive partnership □ On-going evaluation of different plans within the same county/circuit might provide valuable information about productive areas for future partnering